



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

DOUGLAS HANDSHOE)	PLAINTIFF
)	
v.)	CIVIL ACTION NO. 1:14CV159 KS-MTP
)	
DANIEL G. "DANNY" ABEL,)	
CHRIS YOUNT, RAMONA FERNANDEZ,)	
JANEY LAMAR AND STUART SMITH)	DEFENDANTS
LAW CLINIC DBA LOYOLA)	
UNIVERSITY NEW ORLEANS)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION UNDER RULE 4(d)(2) OF THE
FEDERAL RULES OF CIVIL PROCEDURE FOR COSTS OF SERVICE OF PROCESS
DUE TO FAILURE OF CERTAIN PARTIES TO COMPLY WITH DUTY TO AVOID
UNNECESSARY EXPENSES OF SERVING SUMMONS**

MAY IT PLEASE THE COURT

Fed. Rule Civ. Proc. 4(d) imposes a duty to avoid unnecessary expenses of serving the summons in a civil action and specifies a method of obtaining a waiver of service from the defendant parties before the Court. A defendant that is located in the United States that fails without good cause to sign and return a waiver requested by a similarly situated plaintiff becomes subject to a court order requiring the defendant to pay the expenses later incurred in making service along with reasonable expenses including Attorney Fees of preparing the Motion to collect the service expenses.¹

FACTUAL BACKGROUND

On March 10, 2015 this Honorable Court issued an order granting instant Plaintiff's Motion for Leave to Amend his Complaint adding Yount, along with the Loyola Defendants. Plaintiff filed the amended civil action on March 13, 2015, preparing and mailing copies of the amended complaints along with Form AO398, Notice of a Lawsuit and Request to Waive

¹ Fed. Rule Civ. Proc. 4(d)(2)

Service of a Summons and Form AO399, Waiver of the Service of Summons, along with self-addressed, postage prepaid envelopes. United States Post Office Tracking indicates defendants Abel and Yount received the Rule 4(d) waiver packages on Monday, March 16, 2015. A copy of the cover letter dated March 13, 2015 showing the tracking numbers are attached as Exhibit 1 for Defendant Abel.²

On April 15, 2015 Plaintiff, via the Clerk of this Honorable Court, issued Summons to the Defendants, delivering same along with the Court stamped complaints to J. S. Investigations. On May 18, 2015, a representative of J. S. Investigations served Mr. Yount after a court hearing in Gretna Louisiana and attempted service upon Mr. Abel. The cost of service of the summons was \$313.68. Paid invoice #15-737331 in the amount of \$313.68 memorializing this service was previously furnished to the Court on June 2, 2015.

On June 4, 2015, Counsel for the Loyola University defendants acknowledged Loyola's obligation under Rule 4(d) with this Honorable Court and subsequently remitted \$339.10 to Plaintiff.

On August 11, 2015 this Honorable Court ordered Plaintiff to obtain an itemization of J.S. Investigations Invoice #15-737331 in the amount of \$313.68. Attached herewith is Exhibit 2 "Yount itemization" in the amount of \$211.30 and Exhibit 3 "Abel itemization" in the amount of \$102.38 which plaintiff obtained from J.S. Investigations.

On August 14, 2015, Mr. Henry Ward of Tourism Business Solutions executed the summons return related to Abel, which was filed with this Honorable Court on the same date. The cost of the service was \$30.55 thus the total costs of service related to Abel is \$132.93.

² Defendant Yount's Waiver Cover letter was previously furnished to this Court on June 2, 2015.

LAW AND ARGUMENT

Fed. Rule Civ. Proc. 4(d) prescribes the form and content of the Request for Waiver of Service of Summons. Plaintiff, using court forms suggested for that exact purpose of obtaining waivers under Rule 4(d) promptly mailed such forms to the Defendants. Defendants Abel and Yount, failed to return waivers to Plaintiff within 30 days as required.

Plaintiff is a Pro Se litigant thus he is not entitled to Attorney fees specified in 4(d)(2)(B). Plaintiff is however, entitled to the costs of making service, such costs totaling \$211.30 for Mr. Yount and \$132.93 for Mr. Abel.

CONCLUSION

For the reasons cited above Plaintiff prays this Honorable Court enters an order requiring that the Defendant Abel reimburse \$132.93 and that Mr. Yount reimburse \$211.30 to Plaintiff for their failure to comply with their duty to minimize their litigation expenses by waiving service of summons pursuant to Rule 4(d).

Respectfully submitted this 19th day of August, 2015,



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CERTIFICATE OF SERVICE

I, Douglas Handshoe, hereby certify that on August 19th 2015 the foregoing was sent for electronically filing by me via the Clerk of the Court using the ECF system which sent notification of such filing to the following ECF participants:

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I, Douglas Handshoe, certify I have sent a true and correct copy of the foregoing to the following via United States Mail:

Daniel G. Abel
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Respectfully submitted this 19th day of August, 2015,



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